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May 12, 2020

SENT VIA EMAIL ONLY

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President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Trump:

We, the undersigned Attorneys General of Maryland, California, Colorado, Delaware, the District of Columbia, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin, write to express our urgent concern about the effect of your Executive Order invoking the Defense Production Act with respect to meat and poultry processing plants during the pandemic.<sup>1</sup> The industry's workers are risking their lives to maintain production in these facilities under extremely unsafe working conditions. Your action purporting to force plants to stay open and employees to continue working must be accompanied by the enforcement of standards to ensure the safety of these essential workers.

Already considered some of the most dangerous workplaces in America,<sup>2</sup> the crisis of COVID-19 outbreaks in the nation's meat and poultry processing operations is dire and escalating. Recent reports indicate that over 10,000 COVID-19 cases have been tied to these outbreaks, and at least 45 workers have died. Infection clusters at forty plants have been so severe they have been

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<sup>1</sup><https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>; Defense Production Act of 1950, 50 U.S.C. § 4501 *et seq.*

<sup>2</sup><https://www.safetyandhealthmagazine.com/articles/15617-study-of-severe-injury-data-finds-poultry-and-meat-workers-at-high-risk>

required to close for some period, with some reporting hundreds of employees falling ill.<sup>3</sup> Just a few days ago, one facility reported nearly 900 of its 2,200 workers testing positive for the virus.<sup>4</sup>

Grueling workplace conditions in the industry often require thousands of employees to stand shoulder to shoulder for hours, sometimes close enough to accidentally cut coworkers. The jobs frequently entail backbreaking exertion to debone, cleave, and handle carcasses on “disassembly” and “evisceration” lines.<sup>5</sup> The push for faster line speeds and limited access to protective equipment have increased dangers on the job. Even as recently as these last two weeks, the U.S. Department of Agriculture (USDA) has approved over a dozen new line speed waivers, which force employees to work faster and even closer to one another, reduce the number of federal safety inspectors at plants, and shift inspection duties to employees.<sup>6</sup> The spread of disease in these plants has also devastated surrounding communities, with rates of infection in counties with one-third of the country’s beef, pork and poultry processing plants higher than those of 75% of other U.S. counties.<sup>7</sup>

The industry’s failure to act earlier to protect its labor force, and the Administration’s lack of leadership and support for testing, procurement of personal protective equipment (PPE), and enforcement of federal worker safety standards, will be among the many regrettable lapses contributing to the tragic story of America’s experience with this pandemic. Historically, meat and poultry processing workers are rarely paid when they fall ill, and most are not covered by the paid sick leave established by Congress in response to the pandemic because employers with more than 500 employees are exempted. In some plants, workers also receive disciplinary points or “demerits” for calling in sick.<sup>8</sup> Only within the last month have some companies changed their policies to eliminate any punitive effect for missing work due to illness. Efforts to provide

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<sup>3</sup>[https://www.usatoday.com/story/news/investigations/2020/05/06/meatpacking-industry-hits-grim-milestone-10-000-coronavirus-cases/5176342002/;](https://www.usatoday.com/story/news/investigations/2020/05/06/meatpacking-industry-hits-grim-milestone-10-000-coronavirus-cases/5176342002/)

<sup>4</sup><https://thehill.com/homenews/news/495564-nearly-900-workers-at-tyson-meat-plant-in-indiana-test-positive-for-coronavirus>

<sup>5</sup><https://www.npr.org/sections/coronavirus-live-updates/2020/04/29/847937625/workers-scared-as-trump-orders-meat-plants-to-open-during-coronavirus-crisis>; <https://www.propublica.org/article/what-happens-if-workers-cutting-up-the-nations-meat-get-sick>

<sup>6</sup><https://civileats.com/2020/04/17/poor-conditions-at-meatpacking-plants-have-long-put-workers-at-risk-the-pandemic-makes-it-much-worse/>

<sup>7</sup>USDA; Johns Hopkins University; SHO; DCD; USA Today Analysis, <https://www.usatoday.com/in-depth/news/investigations/2020/04/22/meat-packing-plants-covid-may-force-choice-worker-health-food/2995232001/>

<sup>8</sup><https://www.propublica.org/article/what-happens-if-workers-cutting-up-the-nations-meat-get-sick>

employees PPE and enable social distancing, if happening at all, have been even more recent and sporadic.<sup>9</sup> Even in facilities where some PPE has been distributed to workers, reports from within the plants are harrowing—*e.g.*, masks breaking and falling off amid the frenetic activity on the disassembly lines and face coverings fogging up and obscuring vision, which heightens the risk of injury.<sup>10</sup>

Without adequate and enforceable mandates to protect worker safety, your Executive Order may perpetuate this spread of illness and death. The Order directs the Secretary of USDA to take actions to ensure the continued supply of meat and poultry “consistent with the guidance for their operations jointly issued by the CDC and OSHA.”<sup>11</sup> This guidance provides a series of recommendations regarding steps processing facilities should take to promote safe working conditions.<sup>12</sup> Even if these recommendations were sufficient to maintain worker safety, however, they are entirely voluntary. Without making these standards mandatory and taking decisive action to enforce them, the Administration will fail in its duty to provide meaningful protection to workers that have been deemed essential to maintaining our food supply.<sup>13</sup> The toll may be thousands more falling victim to this disease. In addition, the Administration will thwart its own goal of keeping the plants open, as increasing prevalence of COVID-19 infection results in mounting labor shortages.

We request, therefore, that your Administration take immediate action to ensure the safety of these essential workers. The CDC and OSHA guidance must be strengthened and made mandatory, with vigorous and robust federal enforcement. At a minimum, it must include: 1) priority testing for workers in the processing plants; 2) immediate access to adequate PPE; 3) the suspension of all line speed waivers, and a halt to approval of any additional waivers; 4) 6-foot

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<sup>9</sup><https://civileats.com/2020/04/17/poor-conditions-at-meatpacking-plants-have-long-put-workers-at-risk-the-pandemic-makes-it-much-worse/>

<sup>10</sup><https://podcasts.apple.com/us/podcast/1a/id1188724250?i=1000473058366>

<sup>11</sup><https://www.whitehouse.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>

<sup>12</sup><https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

<sup>13</sup>In a letter dated May 5, 2020, USDA Secretary Perdue wrote to “exhort” meat and poultry processing plants to follow the examples of facilities that were restoring operations in accordance with the CDC/OSHA guidance, and he said that plants “should utilize the guidance” to “implement practices and protocols for safeguarding the health of the workers and the community while staying operational or resuming operations.”

<https://www.usda.gov/sites/default/files/documents/stakeholder-letters-covid.pdf>. In a separate letter, he notified governors that he was directing plants to utilize the guidance.

<https://www.usda.gov/sites/default/files/documents/stakeholder-letters-covid.pdf>. As with the guidance itself, however, the Secretary’s exhortation for plants to follow it falls far short of imposing mandatory standards and committing to enforce them.

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physical and social distancing where possible, and plexiglass barriers where distancing cannot be achieved; and 5) isolation and quarantine of COVID-19 positive workers, with full pay.<sup>14</sup>

The Defense Production Act (DPA) is an important tool that presidents since the Korean War have wielded to protect the country and keep Americans safe from threats to national security and public health. Since the onset of this crisis, many have urged more initiative, leadership and use of the law to increase production of critically needed testing supplies and PPE that are vital to the country's efforts to wrest control of this pandemic. Yet your Executive Order, rather than using the DPA to compel production of the supplies necessary to keep essential and frontline workers safe, attempts instead to invoke the law to make them show up for work regardless. Your invocation of the DPA on behalf of the meat industry may force workers to risk their own health or give up their jobs in order to guarantee meat and poultry on America's grocery shelves.

Despite the fact that State and local authorities have been left to their own devices to obtain tests, PPE and medical equipment, your Order may also be used to attempt to seize from states and local jurisdictions control over the difficult decisions as to when meat and poultry plants should remain open.<sup>15</sup> In addition, the Order's implication that it confers immunity from liability on companies for harm suffered by their employees would, if invoked and upheld, further undermine the ability of State and local leaders to protect their own workers.

We fully recognize the complexities at issue here: the security of the national food supply; the jobs and livelihoods of farmers, meat and poultry processors, distributors, and other employers; workers up and down the supply chain; the waste and animal cruelty concerns that arise when processing components of the supply chain break down; the imperative of slowing the spread of disease; and many other issues made more difficult by this pandemic. Yet we must attend to them all without sacrificing the health and safety of hard-working people whose labor helps ensure we can continue feeding the country. By implementing mandatory and effective worker safety standards, and by working together on the myriad other challenges facing the country, we believe

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<sup>14</sup><http://www.ufcw.org/2020/04/30/covidpacking/>

<sup>15</sup>In fact, the U.S. Department of Labor has issued a statement confirming this view of the Order, stating, "because of the President's invocation of the DPA, no part of the Joint Meat Processing Guidance should be construed to indicate that state and local authorities may direct a meat and poultry processing facility to close, to remain closed, or to operate in accordance with procedures other than those provided for in this Guidance." <https://www.dol.gov/newsroom/releases/osha/osha20200428-1>

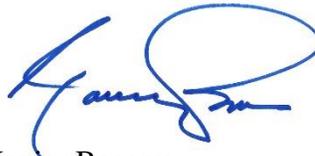
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we can achieve that goal and overcome this historic threat to the health and well-being of our country and our people.

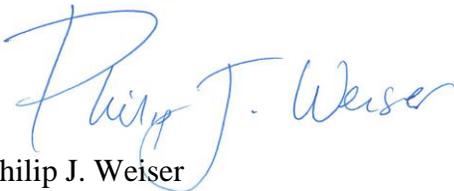
Sincerely,



Brian E. Frosh  
Maryland Attorney General



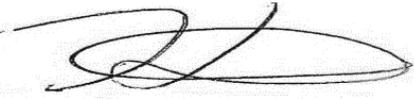
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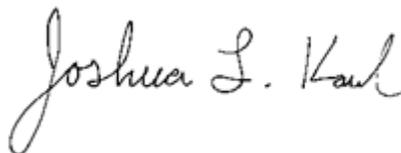
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